October 15, 2008

VIA ELECTRONIC MAIL: Green.Communities@MassMail.State.MA.US

Mr. Philip Giudice
Commissioner
Massachusetts Department of Energy Resources
100 Cambridge Street
Boston, MA 02114

RE: Section 32 of chapter 169 of Acts of 2008; *Green Communities Act* – Class II RPS

Dear Commissioner Giudice:

Pursuant to the request for comments issued by the Massachusetts Department of Energy Resources ("DOER") at the Stakeholder Forum on the RPS held on September 29, 2008, and in furtherance of the requirements contained in the above referenced section of the Green Communities Act, the New England Power Generators Association, Inc. ("NEPGA") and the Independent Energy Producers of Maine (IEPM) hereby respectfully files these comments.[1]

NEPGA represents sixteen companies and approximately 25,000 megawatts (or over 80 percent) of the generation in New England, and approximately 12,000 megawatts in Massachusetts. IEPM is a not-for-profit association of renewable power producers, suppliers of goods and services to those producers, and other supporters of the industry. IEPM members generate electricity in a sustainable manner from hydro, biomass, wind, tidal, and waste to energy.

As a part of the Green Communities Act, signed into law by Governor Patrick on July 2, 2008, the DOER has opened a stakeholder process to implement §32 of chapter 169 of the Acts of 2008 - Green Communities Act - as that provision altered G.L.c 25A §11F pertaining to the existing Renewable Portfolio Standard ("RPS") to establish three separate standards -- a standard for "Class I" renewables, a standard for "Class II" renewables, and an alternative energy portfolio standard (AEPS).

A separate "Class II" standard, which takes effect January 1, 2009, requires all retail electricity suppliers to provide annually a minimum percentage – to be determined by the DOER – of kWh sales to end-use customers in Massachusetts from "Class II" renewables. "Class II" renewables include systems operating before December 31, 1997, that generate electricity using PV; solar thermal-electric energy; wind energy; ocean thermal, wave or tidal energy; fuel cells utilizing renewable fuels; landfill gas; energy generated by certain existing hydroelectric facilities up to five megawatts in capacity; certain waste-to-energy which is a component of conventional municipal solid waste plant technology in commercial use; low-emission advanced

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[1] The views expressed in these comments do not necessarily represent the positions of each of NEPGA/IEPM's members. In addition, nothing in these comments should be deemed to waive any rights that NEPGA, IEPM or any of their members may have to challenge the administrative, procedural or substantive validity of the proposed regulations.

biomass power conversion technologies using fuels such as wood, by-products or waste from agricultural crops, food or animals, energy crops, biogas, liquid biofuels; marine or hydrokinetic energy; or geothermal energy.

I. Comments of NEPGA and IEPM

1) How should the Annual Class II RPS percentage rate be determined, and what should that rate be?

The Annual Class II RPS percentage rate should be determined in a manner that achieves an overall diversity of resources and maintains valuable environmental assets. In the same respect, the Class II RPS program must not disproportionately burden consumer costs. NEPGA/IEPM suggest establishing the Class II percentage rate at 25% of the Class I percentage rate.

2) What criteria should be required for any of the specified eligible technologies or fuels?

NEPGA/IEPM disagree with the provision in Section 32 of chapter 169 of Acts of 2008 - Green Communities Act - that limits Class II eligibility for hydroelectric facilities to existing facilities that are 5 MW or less in size as follows:

> (6) energy generated by existing hydroelectric facilities, provided that … only energy from existing facilities up to 5 megawatts shall be considered renewable energy …(*emphasis added*)

NEPGA/IEPM acknowledge that the construction and operation of hydropower dams can significantly affect natural river systems as well as fish and wildlife populations. Therefore, assessment of the environmental impacts of a specific hydropower facility requires case-by-case review. The language in §11F (6) adequately provides that protection as follows:

> …such existing facility shall meet appropriate and site-specific standards that address adequate and healthy river flows, water quality standards, fish passage and protection measures and mitigation and enhancement opportunities in the impacted watershed as determined by the department in consultation with relevant state and federal agencies having oversight and jurisdiction over hydropower facilities… (*emphasis added*)

The imposition of a 5 megawatt threshold in Massachusetts only serves to distinguish the Commonwealth from other New England states by limiting a prolific source of renewable energy that could otherwise benefit the regional economy and environment.[2] Vermont allows existing hydroelectric facilities up to 200 MW, which covers all 1,838 MW of conventional hydroelectric facilities in New England. Maine allows existing hydroelectric facilities up to 100 MW which

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[2] Global hydroelectricity production grew by 1.7% in 2007, down from 4.0% in both 2005 and 2006 but similar to the ten-year year average of 1.9%. Energy Information Association.

covers everything in New England except the Moore and Comerford facilities. Maine's eligibility equates to approximately 1,485 MW of eligible hydroelectric facilities, or 81% of the conventional hydroelectric capacity in New England. Rhode Island allows hydroelectric facilities up to 30 MW, or 962 MW (53%) of conventional hydroelectric facilities. New Hampshire and Connecticut only allow hydroelectric facilities up to 5 MW, thereby limiting their eligibility to 235 MW or 13% of the hydro capacity in the region.

NEPGA/IEPM maintain that a hydro facility that meets all of its environmental and regulatory requirements (fish passage, minimum flows etc) should not be constrained from participating in the program because of an arbitrary size limit. Increasing the pool of resources will help keep the price of the new RPS Class II program lower to consumers while providing the "green" attributes the Commonwealth is striving for.

Additionally, Massachusetts is a party to the ten-state Regional Greenhouse Gas Initiative aimed at reducing the region's greenhouse gas emissions. Hydroelectric facilities of any size help the region, including the Commonwealth, to work toward its goal of increasing the use of clean, renewable "green" power. Penalizing or implementing policies that create disincentives for hydropower to compete in the marketplace is the wrong message to send at a time when the Commonwealth, New England, and the country are calling for more indigenous resources to power their homes, businesses, and industries.

3) What should the Alternative Compliance Payment (ACP) amount be for Class II, and how should it be calculated?

Prudent economic and energy policy dictates that the DOER should recognize that the revenue from the ACP for the Class II RPS is ultimately paid by the electric consumer. RPS revenues are only one of the cost adders that currently burden the consumer cost of electricity and, as such, should be limited. Accordingly, NEPGA recommends establishing a proper ACP by utilizing a more comprehensive stakeholder process consisting of balanced representation between supply-side and consumer-side interests to identify the issues relating to all parties. The stakeholder process should be narrowly focused and limited to the development of an ACP that adequately incents development of resources in satisfaction of the goals of the Class II RPS, and should not revisit the substantive merits of the Class II RPS.

NEPGA/IEPM appreciate this opportunity and requests that the DOER consider its comments as submitted herein. Please contact us if we can provide any further information.

Sincerely,

Christopher P. Sherman
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New England Power Generators Association, Inc.

Jeremy Payne
Executive Director
Independent Energy Producers of Maine